

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Marivelle Nunez,

Plaintiff

v.

Homefield Financial, Inc., and KeyBank  
National Association,

Defendants

Case No.: 2:16-cv-01504-JAD-NJK

**Order Denying Without Prejudice Motion  
for Default Judgment**

[ECF No. 49]

Marivelle Nunez, as the trustee for the Marivelle Nunez Revocable Living Trust,<sup>1</sup> sues Homefield Financial, Inc. and KeyBank National Association, alleging that they continue to claim adverse interests on a property that the Trust obtained by quit-claim deed.<sup>2</sup> Default was entered against Homefield and KeyBank,<sup>3</sup> and Nunez now moves this court to enter default judgment against them.<sup>4</sup> When determining whether default judgment is available, the court must evaluate the seven factors outlined by the Ninth Circuit in *Eitel v. McCool*.<sup>5</sup> But Nunez has not explained how the *Eitel* factors justify default judgment against Homefield and KeyBank, so I deny her motion without prejudice to her ability to file a new motion for default judgment that properly evaluates the *Eitel* factors.

<sup>1</sup> ECF No. 49 (motion for default judgment).

<sup>2</sup> ECF No. 1 at 33 (complaint).

<sup>3</sup> ECF Nos. 25 (Clerk's entry of default against Homefield), 35 (Clerk's entry of default against KeyBank).

<sup>4</sup> ECF No. 49.

<sup>5</sup> *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986).

## Background

On July 19, 2005, Marivelle Nunez obtained title to a property located at 6120 Skokie Court in Las Vegas, Nevada 89130.<sup>6</sup> The property was obtained by way of a bargain-and-sale deed that was recorded with the Clark County Recorder on June 5, 2005.<sup>7</sup> Nunez then granted two deeds of trust to Homefield Financial on August 31, 2006, naming Mortgage Electronic Registration Systems as the beneficiary.<sup>8</sup> Nunez granted a third deed of trust to KeyBank National Association on December 15, 2006.<sup>9</sup>

However, the property went into foreclosure, and a public sale of the property was held on March 8, 2013.<sup>10</sup> Premier One Holdings obtained title to the property by way of foreclosure deed on March 11, 2013.<sup>11</sup> Nunez alleges that Premier One obtained the title to the property “free and clear of all junior liens and encumbrances affecting title to the [p]roperty, including any deed of trust” given to Homefield Financial and KeyBank National.<sup>12</sup>

Nunez subsequently reached out to Premier One in an effort to repurchase the property.<sup>13</sup> She was able to obtain title to the property by way of quit-claim deed on March 27, 2013.<sup>14</sup> Sometime after title was transferred back to Nunez, Homefield and KeyBank asserted claims to

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<sup>6</sup> ECF No. 1 at 8–9.

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 18.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.* at 32.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 11.

<sup>14</sup> *Id.* at 13.

1 the title of the property.<sup>15</sup> Nunez alleges that Homefield and KeyBank continue to claim adverse  
 2 interests in the property through the deeds of trust that Nunez gave them in 2006.<sup>16</sup> Nunez  
 3 alleges that their claims have created a “cloud upon title.”<sup>17</sup>

4 So, on May 4, 2016, Nunez filed her complaint against Homefield and KeyBank alleging  
 5 that she has superior interest in the property.<sup>18</sup> Nunez moved for and obtained entry of default  
 6 against Homefield<sup>19</sup> and KeyBank<sup>20</sup> and now asks me to enter default judgment against both  
 7 defendants under FRCP 55(b)(2) that includes declaratory and injunctive relief.<sup>21</sup>

### 8 Discussion

9 Federal Rule of Civil Procedure 55(b)(2) permits a plaintiff to obtain a default judgment  
 10 if the clerk previously entered default based on a defendant’s failure to defend. After entry of  
 11 default, the complaint’s factual allegations are taken as true, except those relating to damages.<sup>22</sup>  
 12 “[N]ecessary facts not contained in the pleadings, and claims [that] are legally insufficient, are  
 13 not established by default.”<sup>23</sup> The court has the power to require a plaintiff to provide additional  
 14 proof of facts or damages in order to ensure that the requested relief is appropriate.<sup>24</sup> Whether to  
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16 <sup>15</sup> *Id.* at 20.

17 <sup>16</sup> *Id.* at 33.

18 <sup>17</sup> *Id.* at 20.

19 <sup>18</sup> *Id.* at 34.

20 <sup>19</sup> ECF No. 25.

21 <sup>20</sup> ECF No. 35.

22 <sup>21</sup> ECF No. 49.

23 <sup>22</sup> *Tele Video Sys., Inc v. Heidenthal*, 826 F.2d 915, 917–18 (9th Cir. 1987) (per curium); Fed. R. Civ. P. 8(b)(6) (“An allegation—other than one relating to the amount of damages—is admitted if a responsible pleading is required and the allegation is not denied.”).

24 <sup>23</sup> *Cripps v. Life Ins. Co.*, 980 F.2d 1261, 1267 (9th Cir. 1992).

<sup>24</sup> *See* Fed. R. Civ. P. 55(b)(2).

1 grant a motion for default judgment lies within my discretion,<sup>25</sup> which is guided by the seven  
 2 factors outlined by the Ninth Circuit in *Eitel v. McCool*:

3 (1) the possibility of prejudice to the plaintiff; (2) the merits of the  
 4 plaintiff's substantive claim; (3) sufficiency of the complaint; (4)  
 5 the sum of money at stake in the action; (5) the possibility of a  
 6 dispute concerning material facts; (6) whether the default was due  
 to excusable neglect; and (7) the strong policy underlying the  
 Federal Rules of Civil Procedure favoring decisions on the  
 merits.<sup>26</sup>

7 A default judgment is generally disfavored because "[c]ases should be decided upon their merits  
 8 whenever reasonably possible."<sup>27</sup>

9 Except for the substantive merits of Nunez's claims, Nunez's motion does not address the  
 10 *Eitel* factors. Nunez has thus left me without the guidance and information that I need to  
 11 determine whether default judgment is warranted. I therefore deny Nunez's motion without  
 12 prejudice to her ability to file a new motion for default judgment that addresses the *Eitel* factors  
 13 and explains why those factors warrant the judgment that Nunez requests.

#### 14 Conclusion

15 Accordingly, IT IS HEREBY ORDERED that plaintiff's motion for default judgment  
 16 [ECF No. 49] is **DENIED without prejudice** to the filing of a new motion that properly  
 17 evaluates the *Eitel* factors.

18 Dated: June 29, 2020

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 20 U.S. District Judge Jennifer A. Dorsey

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 22 <sup>25</sup> *Eitel*, 782 F.2d at 1471.

23 <sup>26</sup> *Id.* at 1471–72.

<sup>27</sup> *Id.* at 1472.